IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3259 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTILAL S PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3259 of 2000

MRS KETTY A MEHTA for Petitioner No. 1

MS REETA CHANDARANA, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-3

MR MM TIRMIZI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 11/10/2004

ORAL JUDGEMENT

In the present petition, the petitioner has prayed for a direction against the respondents to make payment of salary to the petitioner with effect from

10.12.1991 in accordance with the order passed by the District Development Officer on 5.12.1991, and also for being granted pension with effect from 31st August, 1996 i.e. the date on which the petitioner reached the age of superannuation.

2. The short facts leading to the present petition are that the petitioner was appointed as Talati-cum-Mantri on 1.4.1963. In the year 1980, there were some charges of corruption levelled against the petitioner, for which he was convicted in the Criminal Court. The petitioner challenged the judgement of the Criminal Court before this High Court. This Court was pleased to partially allow the appeal and converted the conviction by substituting it by punishment of imprisonment of 4 months i.e. sentence already undergone. In the meantime, the petitioner came to be dismissed from service, which dismissal the petitioner appealed against. While this appeal was pending, it is the case of the petitioner that the Panchayat reviewed and cancelled the order of dismissal of the petitioner, which was passed in the year 1980. Once again by an order passed in 1982 i.e. precisely on 16.10.1982, the Deputy Development Officer dismissed the petitioner from service. The petitioner appealed against the said order before the District Development Officer under Rule 19 of the Gujarat Panchayats (Discipline and Appeal) Rules and the District Development Officer, by order dated 5.12.1991, set aside the order dated 16.10.1982. While doing so, the District Development Officer provided that the petitioner shall not be entitled to salary from the date of his dismissal till his actual reinstatement and that Departmental enquiry against the petitioner shall be conducted.

3. The petitioner has stated that pursuant to the said order dated 5th December, 1991, the petitioner reported for duty on 10.12.1991, but he was not permitted to resume duty. The petitioner thereafter, made several representations and issued notices to the respondent authorities, however, none of them were replied to, nor the petitioner was permitted to resume duty. Even after reaching the age of superannuation on 31.8.1996, the petitioner corresponded with the respondents for being given the salary atleast from 10.12.1991 till the date of retirement and also requested for grant of pension. It is the case of the petitioner which is not denied by the respondents, that neither any salary has been paid to the petitioner, nor the petitioner has been paid pension after his retirement.

4. It is not in dispute that the District Development Officer by his order dated 5.12.1991, was pleased to quash and set aside dismissal of the petitioner. In the said order, it was specifically provided that the petitioner shall not be entitled to salary for the period from 16.10.1982, till his actual reinstatement. It was also provided that the Departmental enquiry shall be conducted against the petitioner. However, it is not in dispute that the petitioner was not allowed to resume duty. It is also not in dispute that subsequent to the order dated 5.12.1991, no fresh enquiry was conducted against the petitioner, nor any fresh order of punishment passed against him.

5. In the affidavit-in-reply, it is primarily stated by the respondent No.2 that though by order dated 5.12.1991 the dismissal of the petitioner was quashed and set aside and the petitioner was directed to be reinstated in service, merely by passing order dated 5.12.1991 the petitioner does not automatically get reinstated in service. This is a curious argument and cannot be accepted. When the competent authority has set aside the order of dismissal and directed reinstatement of the petitioner, there was nothing more to be done by the respondents except to carry out the order of reinstatement, unless the order dated 5.12.1991 itself was reviewed or recalled by the competent authority. This is not the case in the present matter. The order dated 5.12.1991 thus, achieved finality and it therefore had to be implemented by the respondents and the author of the order himself cannot be allowed to say that the petitioner is not required to be reinstated. Even after passing of the order dated 5.12.1991, the respondents could have conducted denovo enquiry which also admittedly was not done. The petitioner reported for reinstatement, but was not allowed to resume duties and the respondents did not take any further steps to conduct any enquiry against the petitioner. In that view of the matter, the petitioner is justified in complaining against non-payment of his salary and retiral benefits after his superannuation.

6. In the result, the petition is required to be allowed and is accordingly allowed. The respondents are directed to pay to the petitioner the salary for the period between 10.12.1991 till 31.8.1996 and also further to fix his pension on the basis of his entire service till his superannuation, and pay the arrears of pension and other retiral benefits accordingly.

7. The above payments shall be made within a period of 4 months from the date of receipt of a copy of this order. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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